



The Compliance Connection

Regulatory News for Virginia Mortgage and Consumer Finance Licensees

State Corporation Commission -- Bureau of Financial Institutions

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance, industrial loan and nonprofit debt counseling agency licensees, and other interested parties. It is the licensee's responsibility to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, Virginia 23218-0640 or via e-mail at: nwalker@scc.state.va.us.

Special thanks to Susan Hancock, Melissa McCollum, Jane Owen and Todd Rose, for their contribution to this issue!

Use of Preapproval Letters by Brokers

The Bureau of Financial Institutions has recently received several complaints in which brokers have issued "preapproval" letters to consumers who then proceed, in reliance upon such letters, to sign home purchase contracts only later to be denied a mortgage loan based on credit reasons. In a number of cases, there has not been a lender standing behind the issuance of these "preapproval" letters.

According to a final rule issued by the Federal Reserve Board this past February, a preapproval is a written commitment issued by a lender after a comprehensive analysis of the creditworthiness of the applicant (including such verification of income, resources, and other matters as is typically done as part of a normal credit evaluation program) which is conditioned solely upon (1) identification of a suitable property; (2) no material change in the applicant's financial condition or creditworthiness prior to closing; and (3) limitations not related to the financial condition or creditworthiness of the applicant that a lender ordinarily attaches to a traditional mortgage application (such as completion of a home inspection, an acceptable title insurance binder, certification of a clear termite inspection, etc.).

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Document Preparation Fees:

The Bureau has recently received a number of questions regarding the collection of document preparation fees in connection with **first** mortgage loans.

Section 6.1-330.70 of the Code of Virginia permits a lender to "...require the borrower to pay the reasonable and necessary charges in connection with making the loan, including the cost of title examination, title insurance, recording and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisal, credit reports, drawing of papers and closing the loan."

In the Virginia State Bar's UPL Opinion 112, it states it is the unauthorized practice of law for a mortgage company to make a separate charge for the preparation of instruments affecting title to real estate in connection with a

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Mortgage Questionnaires Revised:

Please be aware that we've recently made some changes to the Officer's Questionnaire portion of the Mortgage Report of Examination. In addition to requiring a list of all branch offices, you will have to provide detailed answers to the following questions:

- ◆ How are branch managers compensated?
- ◆ Is compensation for branch managers based on the net profit of their branches?
- ◆ Are branch managers responsible for paying any of the expenses of the branch: e.g. rent, telephone, utilities, etc?
- ◆ Are branch managers required to issue a personal check to cover the operating expenses of their branches if funds are not available from an operating account?
- ◆ Are contracts with vendors such as leases, telephones, utilities, and advertising written in the name of the licensee or the branch manager?

You may also be asked to provide the Analyst with a copy of any branch agreements in force with your branch managers. Be prepared to provide this information during your next examination!



The 2002 Edition of the Laws of Virginia Related to Non-Depository Financial Services was mailed to all licensees around the first of September. One copy was mailed to the President of each licensee, to the mailing address on file with the Bureau. Companies licensed after that date will receive a copy of the law book when they attend the mortgage orientation (see article on page 4). You can also access the laws, regulations and administrative letters via our Web site at www.state.va.us/scc/division/banking.



IMPORTANT COMMISSION TELEPHONE NUMBERS

Consumer Finance and Mortgage Examinations(804) 371-9701

Licensing (applications, name changes, relocations).....(804) 371-9690

Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk's Office.....(804) 371-9733

FAX Number for the Bureau of Financial Institutions.....(804) 371-9416



**All state offices will be closed on
the following holidays:**

Monday, October 14
Columbus Day

Monday, November 11
Veteran's Day

Thursday & Friday, November 28 & 29
Thanksgiving

Wednesday, December 25
Christmas

Document Preparation Fees

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real estate mortgage closing. The opinion notes that §6.1-330.70 of the Code of Virginia "...directs that the company may require the borrower to pay expenses reasonably related to the transaction; however, the parties receiving payment must be restricted to those who are legally entitled to make such charge."

Additionally, the Regulation X (RESPA) §3500.12 prohibits the imposition of a charge for the preparation of the HUD-1 or HUD-1A, escrow account statements, or statements required by the Truth-in-Lending Act.

PLEASE NOTE: Document preparation fees are prohibited on subordinate mortgage loans, pursuant to §6.1-330.72 of the Code of Virginia.

New Staff Handling Complaints

The Bureau has hired two Senior Financial Analysts to handle consumer complaints for the Bureau of Financial Institutions.

Melissa McCollum comes to the Bureau from Chesterfield County, VA where she was a Senior Tax Auditor. Her previous experience also includes positions as a Compliance Officer with Central Fidelity Bank, a Consumer Affairs Investigator with Virginia's Department of Agriculture and Consumer Services, and as an Associate National Bank Examiner with the Office of the Comptroller of the Currency.



Locke Trigg has actually worked for the Bureau since 1989 as a bank examiner, but has recently made the transition from the Banking Section to Consumer Complaints. Prior to joining the Bureau, he had 14 years of banking experience in various positions with several banks in the Richmond area as Assistant Credit Manager with Sovran Leasing, and Credit Analyst, Loan Interviewer and Dealer Credit Analyst with Bank of Virginia.

They both bring a wide range of experience in the Compliance Area. Melissa and Locke are committed to handling all complaints thoroughly and, with the help of all licensees, in a timely manner.

Attention New Mortgage

Licensees:

Friday, November 15, 2002 is the date of the next orientation for new mortgage lender and/or broker licensees. Companies licensed between July 1, 2002 and September 30, 2002 will receive information about the session. Orientation begins at 9:30 a.m. at our office and concludes around 3:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties. Call Carol Foster at (804) 371-9701 to register!



Frequently Asked Question: **(from Bureau's Web site)**

Question: I am a mortgage lender/broker not licensed in the Commonwealth of Virginia, but I have an opportunity to do one Virginia residential mortgage loan. Do I need a license in Virginia to make or broker one loan?

Answer: The answer depends upon whether you will act as a lender in the transaction or the broker. Pursuant to §6.1-411 of the Code of Virginia, mortgage lenders making 10 or fewer mortgage loans in any period of 12 consecutive months are exempt from the licensing requirements and other provisions of the Mortgage Lender and Broker Act. This, however, does not hold true for mortgage brokers. If you act as a mortgage broker, you would need a license to originate even one loan. Please note that it is the position of the Bureau of Financial Institutions that the payee name in a mortgage loan note is presumed to be the mortgage lender in that transaction (Reference: Administrative Ruling 1601). Please also refer to the definitions under §6.1-409 of the Code of Virginia. The application forms for mortgage lender and broker licenses are available under the Application Forms section of the Web site (www.state.va.us/scc).

Preapproval Letters

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The issuance of a preapproval letter implies that it is being issued by a lender who has rendered a credit decision and furnished a written commitment (subject to the limited conditions described above) to extend a home purchase loan up to a specified amount for a designated period of time. In the absence of a credit decision and written commitment from a lender, BFI would view the issuance of a preapproval letter by a broker as potentially misleading and/or deceptive. Furthermore, 10 VAC 5-160-20 states that "...no licensee shall . . . make false promises to induce an applicant to apply for a mortgage loan or to induce an applicant to enter into any commitment agreement or lock-in agreement or to induce an applicant to pay any commitment fee or lock-in fee in connection therewith." In addition, brokers are cautioned that this practice may be a violation of the Virginia Consumer Protection Act, § 59.1-196 *et seq.* of the Code of Virginia.

In contrast to a preapproval letter, brokers may provide consumers with prequalification letters without a binding commitment from a lender. According to the Federal Reserve Board, "...a prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective loan applicant would *likely* qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would *likely* qualify."

Brokers are encouraged to carefully review the terminology they use when communicating with consumers. As discussed above, "preapprovals" and "prequalifications" have very different standards and meanings. Therefore, these terms may not be used interchangeably.

License Update

The following is a list of companies that have surrendered their licenses, had their licenses revoked, had an application denied, or been fined by the Commission **since May 15, 2002**. This list should be helpful to keep track of companies with which you do business. **These lists are accurate as of August 15, 2002**. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at: <http://www.state.va.us/scc/division/banking/vamortgagelist.htm>.

Mortgage License Surrenders:

MB - 376 Dorsey Evans t/a Century Finance - 5/16/02
MLB - 373 Consultant's Mortgage Inc. (Used in VA by The Mortgage Consultants, Inc.) - 5/17/02
MLB - 232 Johnson Mortgage Company - 5/24/02 NOW LICENSED AS MLB - 792 JOHNSON MORTGAGE COMPANY, LLC
MB - 1345 Danny Ray Webb d/b/a Imperial Mortgage - 5/28/02
MLB - 652 AmeriSource Mortgage, LLC - 5/31/02
ML - 414 RBMG, Inc. - NOW EXEMPT - 6/6/02
MB - 1212 Garry L. O'Neill - 6/14/02
MB - 1604 Preferred Leads, Inc. - 6/15/02
MB - 930 Victory Mortgage, Inc. - 6/20/02
MB - 1729 Southwest Mortgage Company, LLC - 6/28/02
MB - 1196 Ivy K. Inocencio d/b/a Sunny View Mortgage Group - 07/01/02
NOW LICENSED AS MB - 1915 SUNNY VIEW MORTGAGE GROUP, LLC
MB - 1241 Ability Mortgage Funding, LLC - 7/1/02
MLB - 638 Mortgage Portfolio Services, Inc. - 7/15/02
ML - 315 Sebring Capital Corporation - 7/16/02
MLB - 726 Nation's Standard Mortgage Corp. - 8/14/02



Denials:

MB - 1786 Old Dominion Mortgage, LLC - 5/20/02
MB - 1870 Equity Solutions, Inc. - 5/20/02
MB - 1929 American Family Mortgage, Inc. - 8/12/02

Revocations:

MB - 559 American Mortgage Bankers, Inc. - 7/9/02 - for failure to maintain surety bond as required by §6.1-413 of the Code of Virginia

Penalties Paid:

MB - 841 Accent Mortgage Services, Inc. - 7/29/02 - paid \$500 fine for failing to obtain approval prior to relocating an office, in violation of §6.1-416 of the Code of Virginia
MLB - 349 Home Loan Corporation - 8/2/02 - paid \$1,000 fine for failing to obtain approval prior to relocating an office, in violation of §6.1-416 of the Code of Virginia

NOTE: A list of regulatory actions taken since 1995 (penalties paid, revocations, denials) is available on the Bureau's Web site at:

<http://www.state.va.us/scc/division/banking/violate.htm>.



**State Corporation Commission
Bureau of Financial Institutions
P.O. Box 640
Richmond, Virginia 23218-0640**



IMPORTANT REGULATORY INFORMATION ENCLOSED!